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| 10/739,438 | 12/18/2003 | Toby L. Burton | AUS920030592US1 | 9297 |
| 35525 | 7590 | 09/07/2007 | | |
| IBM CORP (YA) | | | EXAMINER | |
| C/O YEE & ASSOCIATES PC | | | ANWARI, MACEEH | |
| P.O. BOX 802333 | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|-------------------------------|-------------------------------|--|
| Office Action Summary | Application No. 10/739,438 | Applicant(s) BURTON ET AL. | |
| | Examiner Maceeh Anwari | Art Unit 2144 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 06 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>12/18/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to the amendments filed on 7/06/2007. Claims 1-7, 9, 11-18, 20, and 22-25 were amended. No other claims have been amended, canceled, or newly presented. Accordingly, claims 1-25 are pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear for one of ordinary skill in the art to determine what the applicant is claiming when referring to phrases, such as "resource monitor instance configuration profile for an instance of a given resource monitor assigned to an instance of a given resource" with out effectively defining the terms within the disclosure. Ultimately failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The examiner will interpret the term instance to be one occurrence of any event.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-25 are rejected under 35 U.S.C. 102(b) as being anticipated by

Lumelsky et al. (hereinafter Lumelsky), U.S. Patent No.: 6,460,082.

Lumelsky teaches:

Claim 1:

(Currently Amended) A method for provisioning resource monitors, the method comprising:

providing at least one monitor specification, wherein a monitor specification includes a definition of parameters for a resource monitor, and wherein the monitor specification includes both a deployment profile specification, defining a list of parameters that must be defined for each instance of the resource monitor that is deployed, and a response profile specification, defining parameters that are returned by deploying the resource monitor (Figures 1-4 & 7-8(a-b) and Col. 7 lines 38-57 & Col. 13 lines 33-67; resource envelope, meta-data, resources management feedback and resource management interface); providing at least one resource specification, wherein a resource specification includes a definition of parameters that must be defined for each instance of a resource, and wherein the resource is the resource to be monitored (Figures 1-4 & 7-8(a-b) and Col. 7 lines 38-57 & Col. 13 lines 33-67; resource envelope, resource envelope adjustments, meta-data, resources management feedback and resource management interface); [[and]] associating at least one monitor specification with a resource specification to form at least one resource monitor instance

configuration profile; and storing the at least one resource monitor instance configuration profile (Figures 1-4 & 7-8(a-b) and Col. 7 lines 38-57 & Col. 13 lines 33-67 & Col. 8 lines 1-21; resource envelope, meta-data, service objects, service unit management module and storage bins and databases).

Claim 2:

(Currently Amended) Further comprising:

retrieving ~~providing~~ a resource monitor instance configuration profile for an instance of a given resource monitor ~~[[for]]~~ assigned to an instance of a given resource instance (Figures 1-4 & 7-8(a-b) and Col. 7 lines 38-57 & Col. 15 lines 12-24; retrieving service unit envelopes, resources management feedback and resource management interface).

Claim 3:

(Currently Amended) Further comprising:

receiving a selection of a given resource monitor to be provisioned for the instance of the given resource (Figures 1-2 & 4 and Col. 6 lines 17; resource pools, multiple resources and meta-resources); and storing a monitor configuration profile for the given resource monitor in association with the resource monitor instance configuration profile (Figures 2 & 4 and Col. 6 lines 46-56; storage bins and global pools, and memory slots).

Claim 4:

(Currently Amended) Further comprising:

receiving at least one value for a parameter for the given resource monitor,

wherein the monitor configuration profile includes the at least one value for a parameter (Figure 2 and Col. 7 lines 49-57; service signature, access rights, cost).

Claim 5:

(Currently Amended) Wherein receiving at least one value for a parameter for the given resource monitor includes presenting an interface to define parameters for the given resource monitor based on a monitor specification for the given resource monitor (Figure 7 Col. 13 lines 38-57 & Col. 13 lines 32-65; Native Resource Management Interface service unit mapper module).

Claim 6:

(Currently Amended) Further comprising:
deploying the given resource monitor in accordance with the monitor configuration profile (Figures 2 & 7-8(a-b) and Col. 4 lines 54-61 & Col. 7 lines 28-67; service signature, service unit, and resource envelope).

Claim 7:

(Currently Amended) Wherein deploying the given resource monitor further includes: determining whether manual intervention is required for the given resource monitor (Figures 4 & 8a and Col. 4 lines 3-13 & 23-29 & Col. 12 lines 60-63 & Col. 15 lines 12-64; service unit handler, local or global management, dynamic polling and remote authority); and responsive to manual intervention being required for the given resource monitor, interacting with an administrator to receive at least one value for a parameter (Figures 4 & 8a and

Col. 4 lines 3-13 & 23-29 & Col. 12 lines 60-63 & Col.15 lines 12-64; service unit handler, local or global management, dynamic polling and remote authority).

Claim 8:

(Original) Further comprising:

storing response parameters and values in a response profile (Figures 2 & 4-5 & 7 and Col. 6 lines 46-56; storage bins and global pools, and memory slots).

Claim 9:

(Currently Amended) Further comprising:

deprovisioning the given resource monitor using the response parameters and values in the response profile (Figures 4 & 8a and Col. 4 lines 3-13 & 23-29 & Col. 12 lines 60-63 & Col.15 lines 12-64; service unit handler, local or global management, dynamic polling and remote authority).

Claim 10:

(Original) Further comprising:

capturing output parameters and values of a monitor deployment and storing them to the response profile (Figures 2 & 4-5 & 7 and Col. 6 lines 46-56 Col. 15 lines 12-64; storage bins and global pools, and memory slots and metadata and the service signature).

Claim 11:

(Currently Amended) Wherein the instance of the given resource instance is a resource of a type selected from the group consisting of server hardware, network hardware, storage hardware, operating system software, database

middleware software, application software, and monitoring software (Figures 1-2 & 5 & 7 and Col.13 lines 32-67; resource management, RSVP, CPU and disk, operating system interface).

Claims 12-22 list all the same elements of **claims 1-11**, but in apparatus form rather than method form. Therefore, the supporting rationale of the rejection to **claims 1-11** applies equally as well to **claims 12-22**.

Claims 23-25 lists all the same elements of **claims 1-3**, but in a computer program product form rather than method form. Therefore, the supporting rationale of the rejection to **claim 1-3** applies equally as well to **claim 23-25**.

Response to Arguments

5. Applicant's arguments filed have been fully considered but are not persuasive. In substance, the applicant argues A) that claims 1-25 as currently amended overcome the 35 U.S.C. §112, second paragraph rejection; B) that Lumelsky does not teach or suggest each and every feature as arranged in the currently amended independent claims 1, 12, and 23; C) Lumelsky is not directed to provisioning resource monitors; D) Lumelsky does not teach setting parameters for a resource monitor from a selection of parameters and defining these parameters that are returned from these resource monitors; E) Lumelsky does not teach storing an association of at least one monitor specification with a resource specification; F) Lumelsky does not teach limitations of the currently amended claims 2, 13, and 24.

6. In response to A), claims 1-25, as currently stated, are still considered to be indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear for one of ordinary skill in the art to determine what the applicant is claiming when referring to phrases, such as "resource monitor instance configuration profile for an instance of a given resource monitor assigned to an instance of a given resource" with out effectively defining the terms within the disclosure. Ultimately failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The examiner will interpret the term instance to be one occurrence of any event.

7. In response to B), examiner respectfully disagrees. The applicant has simply stated structural elements with an intended use. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Regarding the order with which structural elements are presented, the order of structural elements void of any interaction therewith are not given weight. A mere structural equivalence in the prior art is sufficient to meet the scope of the limitations. A specific order of interaction must be explicitly presented in the claims. Claimed subject matter not the specification is the measure of the invention. Disclosure contained in the specification cannot be read into the claims for the purpose of avoiding prior art. In re

Sporck, 55 CCPA 743, 386 F .2d 924, 155 USPQ 687 (1986); In re Self, 213 USPQ 1, 5 (CCPA 1982); In re Priest, 199 USPQ 11, 15 (CCPA 1978).

8. In response to C), examiner respectfully disagrees. As is evident from the title of Lumelsky managing resources is the same as provisioning resources; and furthermore as is evident from within the specification, figure 2, shows the provisioning of specific parameters for resource monitors.

9. In response to D), examiner respectfully disagrees. There are numerous occurrences where Lumelsky provides setting parameters for a resource monitor from a selection of parameters and defining these parameters that are returned from these resource monitors; one specific such occurrence is depicted within figure 2.

10. In response to E), examiner respectfully disagrees. Lumelsky does teach multiple sections the storing and association of at least one monitor specification with a resource specification, through storage bins, global and local pools and memory slots.

11. In response to F), the argument is moot in light of the still pending 35 U.S.C. §112, second paragraph rejection.

It is unclear for one of ordinary skill in the art to determine what the applicant is claiming when referring to phrases, such as, "resource monitor instance configuration profile for an instance of a given resource monitor assigned to an instance of a given resource" with out effectively defining the terms within the disclosure. Ultimately failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The examiner will interpret the term instance to be one occurrence of

any event. Therefore Lumelsky does teach limitations of the currently amended claims 2, 13, and 24.

12. Applicant has had an opportunity to amend the claimed subject matter, and has failed to modify the claim language to distinguish over the prior art of record by clarifying or substantially narrowing the claim language. Thus, Applicant apparently intends that a broad interpretation be given to the claims and the Examiner has adopted such in the present and previous Office action rejections. See *In re Prater and Wei*, 162 USPQ 541 (CCPA 1969), and MPEP 2111.

13. Applicant employs broad language, which includes the use of words, and phrases, which have broad meanings in the art. In addition, Applicant has not argued any narrower interpretation of the claim language, nor amended the claims significantly enough to construe a narrower meaning to the limitations. As the claims breadth allows multiple interpretations and meanings, which are broader than Applicant's disclosure, the Examiner is forced to interpret the claim limitations as broadly and as reasonably possible, in determining patentability of the disclosed invention. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir.1993).

14. Failure for Applicant to significantly narrow definition/scope of the claims and supply arguments commensurate in scope with the claims implies the Applicant intends broad interpretation be given to the claims. The Examiner has interpreted the claims with scope parallel to the Applicant in the response, and reiterates the need for the Applicant to more clearly and distinctly defines the claimed invention.

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Examiner Note: Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching of all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maceeh Anwari whose telephone number is 571-272-7591. The examiner can normally be reached on Monday-Friday 7:30-5:00 PM ES.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Vaughn can be reached on 571-272-3922. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M.A.


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